

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. And-19-491

Adoption by Jessica M. et al.

ON APPEAL from the Androscoggin County Probate Court

APPENDIX

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CERTIFICATE OF SERVICE

PROBATE COURT
ANDROSCOGGIN, ss.

2 Turner Street
Auburn, Maine 04210

DOCKET NO: A-2018-007

IN RE: child

ORDER

Pending before the Court is aunt and uncle's Petition to
Terminate the Parental Rights and Responsibilities of father and mother filed
in connection with a Petition for Adoption of child DOB

This matter was heard on April 10, April 11 and August 13, 2019. The petitioners
were present and were represented by Molly Watson Shukie, Esq. mother appeared by
telephone and video conference and was represented by Matthew Mastrogiamco, Esq.
father appeared by telephone and was represented by Erika Bristol, Esq. The court has
considered the testimony of maternal grandmother
aunt uncle father and
child. In addition, the Court has reviewed Petitioner's Exhibits 1-4, 5A-G,
6-10, 16A-E, 18, 19A and 20 as well as Respondent mother's Exhibits 1-6, and Respondent
father's Exhibits 1-26, 28, 30 and 31.

The Court must find by clear and convincing evidence that child's parents are
unwilling or unable to take responsibility for the children within a time which is reasonably
calculated to meet the children's needs, and/or that the children have been abandoned and that
termination is in the child's best interest. See 22 M.R.S. § 4055(1)(B)(2)(ii) (iii). For the reasons
specified below, the Court grants Petitioners' request and terminates the parental rights of
mother and father

At the time of child's birth, both of his parents were incarcerated and the child came
into the custody of the Department of Health and Human Services. child was placed in the
care of the maternal grandmother, and remained in the custody of the
Department for approximately two years.

In 2009, after successfully completing a court ordered reunification plan, the child
protection action was dismissed and child was placed in the care of father. A Parental
Rights and Responsibility Order was entered granting father sole parental rights and
responsibilities. Contact between child and mother was ordered at father's
discretion on a supervised basis until mother could demonstrate "mental health stability,
no criminal involvements and sobriety."¹ mother left the State of Maine and no evidence
was presented that she ever returned for a visit or otherwise. mother has had a significant
criminal history as well as substance abuse and mental health issues to include suicide attempts.
The maternal grandmother testified that she did not recall a time when her daughter had gone a
year without being incarcerated and has not known of a period when mother ever had

¹ See Petitioner's Exhibit 18E.

State of Maine
Androscoggin ss. Probate Court
A true copy, attested

Tom Reynolds

Register of Probate

stable housing or regular employment. At the time of the hearing mother was in an prison, mother did not present any evidence at the hearing of this matter and there was no evidence presented to indicate mother has had any meaningful contact whatsoever with child following his birth.² As of the third day of trial, despite being released from prison, mother remained in and did not travel to Maine for trial. Accordingly, the Court can establish by clear and convincing evidence that mother has never had a relationship with child and she has abandoned the child.

father was granted custody of child in 2009 and until his most recent period of incarceration, child has resided with him at various residences in and , Maine. During this period, father was responsible for child day to day care. While attending Elementary School, child was reported absent 28 times in kindergarten, 17 times in first grade and 35 times in second grade. In addition, child was often tardy. The frequent absences and tardiness adversely affected child's academic and social development. child's teachers testified that he came to school disheveled and tired, often falling asleep in class.

child's teachers addressed with father concerns regarding child attendance and school performance without success. child's second grade report cards reflect that he rarely turned in homework. It was recommended that father look into Occupational Therapy screenings to address child's ability to form numbers, letters and other skills.

child's medical records indicate that no well child checks occurred after age 4 and he received minimal medical treatment despite evidence of treatable health conditions. When child came to live with Petitioners, he had an untreated skin condition, stomach and constipation issues, foot pain and vision issues, all of which were resolved with medical treatment.

At the time child came into the care of the maternal grandmother in June of 2016 and later with Petitioners in May 2017, he had trouble with many simple life skills like brushing his teeth, holding a fork, tying his shoes, riding a bike, running and blowing his nose. He struggled with maintaining hygiene, lacked confidence, was shy, struggled socially and was prone to anger outbursts.

At trial, father testified that he had no concerns for child's development or medical needs at the time child was left in the care of the maternal grandmother.

² On the third day of the hearing, mother , through counsel, indicated she would consent to the adoption of child expressing an intent to execute a consent. No consent was ever filed with the Court.

³ In May 2017, mother sent a letter in which she acknowledged her drug addiction, indicated she would be doing time in prison and upon release she would return to Maine and come find child and his father. See Petitioner's Exhibit 3. Further, in November 2018, mother , through counsel, sent a birthday card to child .

On February 25, 2015, father was indicted on federal charges alleging that he "knowingly and intentionally conspired with [co-defendants] and others known and unknown to commit offenses against the United States, namely, the distribution and possession with the intent to distribute 280 grams or more of cocaine base, a Schedule II controlled substance." And that he "knowingly leased, rented, used and maintained, permanently or temporarily, an apartment located at Street, , Maine, for the purpose of unlawfully distributing and using controlled substances, including cocaine base, and did aid and abet such conduct."⁴ On January 23, 2017, father was adjudicated guilty of conspiracy to distribute and possess with intent to distribute 280 grams or more of cocaine base. father was sentenced to a period of 60 months in prison followed by three years of supervised release. father began serving his sentence in June 2016 and will not be released until November 2020 at the earliest. At trial, father testified he will not be in a position to provide for child's needs until the completion of his supervised release; three years after discharge from prison. child was almost nine years old when father was incarcerated. He will be thirteen years old if father is released in November 2020 and will be sixteen years old when father completes his supervised release requirement.

At father's request, the maternal grandmother provided child care beginning June 2016. For the next year father sent child a few letters and called a few times.

In May 2017, child moved in with the Petitioners who later were granted guardianship of him in January 2018. Initially, Petitioners paid for texting service to allow communication between father and child. father's texts were sporadic and often weeks would go by between texts. Although child was free to initiate contact with father, he did not do so. In June 2018, the Petitioners terminated the text service citing as reasons father's sporadic use, child non-use and child reaction to the text messages.

Since May 2017, Petitioner's received four letters from father, all of which were received after the pending petitions were filed and discovery was served.⁵ child has never written to father.

While in the Petitioner's care, child has progressed academically. His teacher testified child comes to school prepared with his homework completed and is now performing at grade level. He is engaged in sports, which has helped him grow physically, emotionally and socially. child is in counseling and working with an occupational therapist. He is wearing glasses and orthotics.

The Petitioners have provided child with a structured and safe home environment and are meeting all of his developmental, physical, educational, extracurricular, social, financial and emotional needs. child has developed a close bond with Petitioners as well as his half-sister,

⁴ See Petitioners' Exhibit 16B.

⁵ father produced a fifth letter dated May 22, 2019, that Petitioners deny ever receiving.

To terminate father's parental rights and responsibilities, the Court must find by clear and convincing evidence sufficient facts to support such a finding. Abandonment may form the basis of a termination of parental rights order if "any conduct on the part of the parent showing an intent to forgo parental duties or relinquish claims" including a failure to communicate meaningfully or to maintain regular visitation for a least six months. 22 M.R.S. §4002 (1-A) (2013). "If a parent engages in voluntary conduct that he "knew or should have known, would necessarily and inexorably lead to the loss of opportunity to see his child, then one could find that this conduct — and hence the resulting lack of contact with the child — manifested an intent on the part of the [parent] to abandon the child." *Adoption of Lily T*, 2010 ME 58, ¶ 22, 997 A.2d 722. The Court may consider the length of a parent's incarceration and their ability to take responsibility for the child within a time reasonable calculated to meet the child's needs, particularly in light of the strong policy in favor of permanency. *In re Hanna S.* 2016 ME 32, ¶ 9, 133 A.3d 587. In addition, the Court must consider the effect of a parent's incarceration on a child, including "parent child relationship before and after incarceration, the psychological effect of the incarceration on the child, and the parent's ability to fulfill his or her responsibilities while incarcerated." *In re Asanah S.*, 2018 ME 12, ¶ 16, 177 A.3d 1273.

By father's own conduct, he has been largely removed from child's life and will not be in a position to provide for his needs until 2022 or 2023 at the earliest. By this time, child will be fifteen or sixteen years old. father testified that upon release he will be in a half-way house, intends to go to school, while working full-time, and will need to save money in order to support child. The Court does not find that father will be in a position to meet the needs of child within a time reasonable calculated to meet his needs. Further, the Court finds by clear and convincing evidence that father has failed to maintain any meaningful communication with child during his period of incarceration.

By all accounts, child is thriving while in the care of Petitioners, a marked difference from the time father was responsible. In fact, while in father's care, child did not receive regular medical and dental care, had substantial absences from school, did not do homework assignments, would fall asleep in school, and performed below grade level. child experienced negative emotional and social development. Termination of father's parental rights is in child's best interests. The Petitioners have demonstrated they are able to provide a stable, secure and structured home environment.

Accordingly, the Court ORDERS that the Petition for Termination of father and mother's Parental Rights to child is GRANTED.

The Register shall incorporate this order into the docket by reference pursuant to Rule 79(a) of the Maine Rules of Probate Procedure.

Dated: November 19, 2019



Michael Dubois, Judge of Probate

1 findings?

2 A Yes, ma'am.

3 Q Okay. And you never -- and you would have had a trial
4 on those charges; is that correct?

5 A Yes, I could have.

6 Q Okay. And the Court specifically found that you were
7 dealing drugs -- dealing crack cocaine from your
8 apartment in ; is that right?

9 A They --

10 Q But that's what the Court found?

11 A -- they -- I was -- no. That's not -- that's not
12 correct. Sorry, but that's not the fact. I wasn't --
13 I wasn't found guilty of that. I was -- that charge
14 was dropped.

15 Q The Court still made findings that you were dealing
16 cra -- at your sentencing hearing that you were dealing
17 crack cocaine from your apartment in , and your
18 attorney acknowledged it as well.

19 MS. BRISTOL: Objection is that a question that revolves
20 completely around hearsay.

21 THE COURT: There's a transcript here?

22 MS. SHUKIE: So -- yeah. So I'd like to offer. Your
23 Honor, I filed -- you'll remember I called -- I filed a motion
24 in limine seeking to get the statement of reasons from the
25 federal criminal case admitted as an exhibit. In my -- in the

1 process of attempting to get that document, the federal judge
2 suggested that --

3 MS. BRISTOL: Object.

4 MS. SHUKIE: -- the transcript of the proceedings would
5 be more complete. I have a copy of the proceedings with the
6 Court's verbal findings describing the nature of his crime,
7 which he is greatly minimizing to the Court, and so I would
8 move to admit Petitioners' Exhibit 20, which is a transcript
9 from the sentencing proceeding of January 25th, 2017.

10 (Petitioners' Exhibit 20 Offered)

11 MS. BRISTOL: Objection on relevance and hearsay grounds.

12 THE COURT: And I think the Court can take judicial
13 notice.

14 MS. BRISTOL: It's -- it's higher than hearsay. This is
15 an attempt to get hearsay of my client's attorney and the
16 judge in evidence.

17 MS. SHUKIE: I would --

18 MS. BRISTOL: It's inadmissible.

19 THE COURT: Is this being under some --

20 MS. SHUKIE: Under judicial notice, the Court may take
21 judicial notice of other court records. It may incorporate
22 evidence from other proceedings and admit pertinent findings
23 made at different proceedings if they meet the requirements of
24 collateral estoppel, and that certainly -- this is not an
25 effort to relitigate the criminal case.

1 THE COURT: What rule of evidence (indiscernible)?

2 MS. BRISTOL: It's subject to Rule (indiscernible). Wait
3 a sec, if I have it here in my notes.

4 THE COURT: I know, it'd just be easier (indiscernible).

5 MS. BRISTOL: Yeah, no, I appreciate that. I think it's
6 Maine Rule of Evidence 201-B. Right. There's actually some
7 case law that describes the -- the Court may admit findings
8 from another proceeding. And that was --

9 MS. BRISTOL: So these aren't findings, Your Honor. I
10 think that's -- that's the whole point. This is a transcript
11 of a plea and sentencing hearing. This is hearsay from an
12 attorney. This is hearsay from the Court. This isn't
13 memorialized in an order. These aren't findings. These are
14 things that were said during that proceeding. It's all
15 hearsay.

16 THE COURT: Well -- well, no, I mean, you can
17 (indiscernible).

18 MS. BRISTOL: And none of it was under oath, if I could
19 also indicate that.

20 MS. SHUKIE: Well, how do you know that?

21 MS. BRISTOL: Because it's a transcript.

22 THE COURT: Yeah, but doesn't the --

23 MS. BRISTOL: It tells us --

24 THE COURT: -- but doesn't the Court --

25 MS. BRISTOL: -- whether someone was sworn or not.

1 THE COURT: -- doesn't the Court accept the facts as
2 presented in order to make the necessary findings that
3 somebody's pleading knowingly, voluntarily, et cetera? So
4 aren't those findings?

5 MS. BRISTOL: This is a sentencing hearing. That's
6 not -- this isn't --

7 THE COURT: It's not a plea?

8 MS. BRISTOL: It's -- it's -- she's trying to --

9 THE COURT: This is essentially complete.

10 MS. BRISTOL: So what -- what is -- she would like to get
11 in is what the judge said to him. What his attorney said on
12 the record. That's all hearsay.

13 MS. SHUKIE: It's --

14 MS. BRISTOL: That's what this transcript is is entirely
15 hearsay.

16 MS. SHUKIE: The judge makes -- you know, he indicates,
17 having carefully reviewed -- you know, the -- the evidence.
18 He gives the reasons for why he imposes the sentence he's
19 imposing based on the evidence. And -- and father was
20 present, as was his attorney, and -- and, you know, those were
21 the findings that the Court made to support the sentence he
22 issued.

23 THE COURT: So that portion of the transcript that
24 addresses the Court's findings based upon the evidence is --
25 you're objecting to that?

1 MS. BRISTOL: They're not -- they're not findings.

2 THE COURT: What would you call them?

3 MS. BRISTOL: Statements by the Court explaining --

4 THE COURT: So why are we making semantics here or --

5 MS. BRISTOL: It's -- no.

6 THE COURT: Okay.

7 MS. BRISTOL: It's not memorialized in an order.

8 MS. SHUKIE: It -- Your Honor --

9 MS. BRISTOL: The sentence is in the record.

10 MS. SHUKIE: Much of this --

11 MS. BRISTOL: What the judge's thoughts were in imposing
12 that sentence doesn't get to come into evidence here.

13 MS. SHUKIE: Well, Your Honor, that's -- respectfully,
14 that's what court orders often do. It's not --

15 MS. BRISTOL: But the --

16 MS. SHUKIE: -- the -- it's not the judge's feelings.

17 And often we get court orders where the Court makes findings
18 and then issues their order. The judge -- there is a
19 document. There is a document. There are ex -- there's a
20 strict -- it's under seal. In my efforts to get it through
21 the federal court, Judge Woodcock, during a conference with
22 counsel, and -- and father was represented by his federal
23 attorney -- basically had a lot of concerns about unsealing
24 that document because of the federal rules around that, and he
25 indicated, however, that the transcripts contained the

1 information that would be in that document. And that is
2 precisely what this is. I would be willing to agree that the
3 Court just review from page 25 on, which is when the Court
4 make its findings, and -- and we could exclude the initial
5 portion where the attorneys make their statements.

6 THE COURT: Well, you would agree that the -- the
7 attorneys' statements are nothing but an argument --

8 MS. SHUKIE: Yes, yes.

9 THE COURT: -- Attorney -- all right.

10 MS. BRISTOL: The Court issued a judgment in committal.
11 That is a court order that I think this Court can take into
12 evidence. What people said in a hearing not under oath --

13 MS. SHUKIE: It's the judge.

14 MS. BRISTOL: -- isn't -- it's not an order. It's the
15 judge's thoughts. It's not admissible. It's hearsay.

16 MS. SHUKIE: The Court explains why he was sentenced for
17 the period of time that he was sentenced, and he discusses, on
18 the record, you know, the different factors and why he imposed
19 sentence as he -- as it was.

20 MS. BRISTOL: None of the -- none of that was through a
21 trial with findings and evidence. It's from a plea. So none
22 of that is evidence that came into a court record.

23 THE COURT: Well, this is --

24 MS. SHUKIE: Yeah.

25 THE COURT: -- this is -- it's your -- you're referencing

1 his plea. This is my understanding that there is a recitation
2 of the facts and there is an acknowledgment that -- from the
3 defendant that at least there is some truth to some of the
4 assertions contained therein to support the -- the finding of
5 the guilt of that.

6 MS. BRISTOL: So Attorney Shukie has already -- and we've
7 agreed to admit her Exhibit 16-E, which is the judgment.
8 That's the applicable document, what has already been
9 admitted.

10 MS. SHUKIE: You have actually not agreed to it. But --

11 MS. BRISTOL: Oh.

12 THE COURT: 16-E is not on the list but it -- maybe that
13 will solve the problem?

14 MS. SHUKIE: No.

15 THE COURT: So --

16 MS. BRISTOL: So a transcript is hearsay. That's the
17 basis of my objection. It's not an order. It's not a court-
18 signed order.

19 THE COURT: Is it -- Counsel, are you -- Ms. Shukie, are
20 you contending that that's a court order?

21 MS. SHUKIE: My position is yeah. But the --
22 effectively, it's -- it's the Court's verbal findings and
23 reasoning explaining its sentencing decision, and I believe
24 that -- that the Court may take judicial notice of that.

25 THE COURT: So you're -- they're disagreeing with that.

1 MS. BRISTOL: Correct. It's not memorialized to an
2 order.

3 THE COURT: All right. To the extent that there's
4 anything in that document that relates to argument by counsel,
5 et cetera, then that's -- I'll sustain the objection to that.
6 But I'm going to admit the document as it relates to the
7 Court's findings placed on the record in that matter.

8 (Petitioners' Exhibit 20 Offered)

9 THE COURT: You -- you've been hinting there's a
10 certainty that it starts --

11 MS. SHUKIE: Yeah. Beginning on page 25 is when the
12 Court begins its --

13 THE COURT: All right. For whatever weight that it has
14 to the proceedings. So --

15 MS. SHUKIE: Okay.

16 BY MS. SHUKIE:

17 Q father --

18 THE COURT: Are we clear on that? Everybody has
19 (indiscernible) about the ruling and all?

20 MS. BRISTOL: Page -- sorry. I didn't -- the pages
21 there?

22 MS. SHUKIE: Page 25. Page 25, line 8 is where the Court
23 begins its sentencing discussion.

24 MS. BRISTOL: You're -- you're not -- I'd -- I'd renew my
25 objection because within that section, there -- there's

1 reference to documents and the contents of documents. That's
2 not been admitted here. It didn't go through a trial there.
3 It's the referencing memorandum. The pretry -- the pretrial
4 sentencing report's done by folks not under oath. Like all of
5 those documents that this -- these pages reference aren't in
6 evidence and those are hearsay, and that's what's contained in
7 here.

8 THE COURT: Did your client have an opportunity back at
9 that time to challenge that information before the Court?

10 MS. BRISTOL: He did, Your Honor.

11 THE COURT: All right.

12 MS. BRISTOL: Okay.

13 MS. SHUKIE: Yeah.

14 THE COURT: Okay.

15 MS. SHUKIE: It's a -- it was a federal sentencing so
16 yes, he had an attorney but the process is the process. And
17 he had already pled guilty at that point. So --

18 MS. BRISTOL: The -- it represents --

19 MS. SHUKIE: -- it was an argument and then -- and that's
20 what it was.

21 THE COURT: Look, I --

22 MS. BRISTOL: It doesn't mean everything --

23 THE COURT: -- I agree that the arguments --

24 MS. BRISTOL: -- is true.

25 THE COURT: -- don't come in and they're not going to be

1 admitted as such with evidence here, the argument.

2 MS. SHUKIE: But the information the Court itself is
3 talking about from page 25 on --

4 THE COURT: Which are findings that the Court had made --

5 MS. BRISTOL: And they're --

6 THE COURT: -- as a result of the information presented
7 at a hearing in which your client had an opportunity to
8 respond.

9 MS. BRISTOL: Did not. It's the Court's sentencing based
10 on information the Court has received and that wouldn't be
11 admissible here. It would be hearsay and the Court is talking
12 about that information, which may or may not even be true.
13 It's what --

14 MS. SHUKIE: But well, if I have --

15 MS. BRISTOL: And so --

16 MS. SHUKIE: -- the judge -- on page 3 of the
17 transcript -- he does go -- in his findings he does refer to
18 some presentence investigation report. The Court asks the
19 defendant, father if he understands everything contained
20 in that report, and he says he does, and he says knowing the
21 contents of the report may affect your sentence, is there
22 anything in the report, anything at all, that you believe is
23 in any way inaccurate or incorrect, and the defendant says no,
24 Your Honor. So father had an opportunity to challenge
25 that.

1 THE WITNESS: I think Erika for events off the record.

2 MS. BRISTOL: So and I will do that. But --

3 THE COURT: You're challenging --

4 MS. BRISTOL: -- from my perspective the order starts on
5 page -- the end of page 42 of this document, not 25. That's
6 where the judge actually imposes his sentence and says the
7 actual order.

8 When Attorney Shukie prior asked my client a question
9 about did the judge recommend X, Y, or Z to you, that's not an
10 order. That's in -- that's contained in here as a
11 recommendation. It wasn't admissible when I -- when I
12 objected to that question before and I don't think it
13 contin -- I think it continues to be inadmissible. From page
14 42 at the bottom on, the judge actually says, this is your
15 sentence, here are the conditions. But what Attorney Shukie
16 is trying to get in is this judge's opinions and what --

17 THE COURT: Well --

18 MS. BRISTOL: -- what this judge thinks.

19 THE COURT: -- all right. So -- so the only thing I'm
20 going --

21 MS. BRISTOL: And that's not --

22 THE COURT: I -- I get it.

23 MS. BRISTOL: -- in an order.

24 THE COURT: The only thing that comes in would be the
25 Court's findings and conclusions based upon -- and you're

1 saying those begin on page 42 and --

2 MS. BRISTOL: The --

3 THE COURT: -- you're saying it begins on page 25?

4 MS. BRISTOL: Starting at the -- line 23 on page 42.

5 THE COURT: So we have -- so I'm going to -- the -- my --
6 my -- my ruling stays the same. The argument of counsel, et
7 cetera, that precede those pages do not come in as evidence.

8 I'm going to take -- and conditionally -- the document
9 commencing on page 25, subject to -- I haven't had a chance to
10 look at this, but if it's not an order of the Court, then it's
11 not coming in. But the order of the Court comes in, and that
12 begins on page 42, line 23. Is that what you're saying now?
13 Yes. And that comes in at that point. Does that -- everybody
14 understands that?

15 MS. SHUKIE: Yes.

16 THE COURT: Okay.

17 MS. SHUKIE: Do you still need to speak with your client
18 or can I continue?

19 THE COURT: Well, why don't you finish up and then you
20 can talk to your client afterwards.

21 MS. BRISTOL: Okay.

22 MS. SHUKIE: Okay.

23 BY MS. SHUKIE:

24 Q So father --

25 A Yes, ma'am.

1 child, as Your Honor who does enough family law knows, we try
2 to avoid the kids being involved in the day-to-day operations
3 of the trials and to know what's going on with litigation. So
4 I don't think we should -- that's something that the Court
5 should consider, the fact that the petitioners have chosen to
6 introduce the child into -- into the litigation as one of the
7 factors that you need to be considering.

8 THE COURT: All right.

9 MS. SHUKIE: Well --

10 THE COURT: Well, that's all right. Here -- here's --
11 all right. So I appreciate you articulating the -- the issue
12 as you -- as you see them. I've had a chance to -- to look at
13 the In re A.M. case and from -- from my perspective, I believe
14 that we have provided an opportunity for both these parents to
15 have meaningful participation in this proceeding. They're --
16 they're both available by telephone. One client Master --
17 Attorney Mastrogiacono's client can actually see in the
18 courtroom. And we're going to afford -- we're going to
19 proceed.

20 I'm going to deny the motion to continue. We're going to
21 proceed with taking testimony today. I want both counsel to
22 know, Mastrogiacono and Attorney Bristol, that at any time we
23 are going to accommodate you folks the opportunity to have
24 communication with your respective clients. And I did hear, I
25 think in, at least Attorney Mastrogiacono's request that if

1 the motion was denied you wanted to have an opportunity to
2 keep the record open. Is that --

3 MR. MASTROGIACOMO: Yes, Your Honor.

4 THE COURT: -- correct? And I assume Attorney Bristol is
5 joining in with that particular request?

6 MS. BRISTOL: Yes.

7 THE COURT: All right. So I -- I believe that may be
8 appropriate to -- to do that, at least at this point, to
9 provide an opportunity for the presentation of the
10 respondent's case. I -- I recognize that the Court in In re
11 A.M. appears to view the credibility and demeanor analysis,
12 that I would have a hard time recognizing that it's hard to do
13 that without visual. I certainly recognize Attorney Shukie's
14 point that you can certainly gain some of that through an
15 auditory approach, but I think it's more involved than that.
16 I think a visual assess -- so I think we can keep that record
17 open, at least, to be able to get some means to get a -- now,
18 my concern would be, is it actually possible to do that? Can
19 we actually get a video presentation from you -- you folks? I
20 don't know the answer to that.

21 MR. MASTROGIACOMO: There is a system, Your Honor, that
22 does have for short term. I think about a half an
23 hour that's for the home wave system that you can -- it's not
24 ideal, but it's another thing that I think that is possible
25 for, at least a short-term testimony.

1 THE COURT: All right. And so counsel -- Attorney
2 Bristol, do you know of any --

3 MS. BRISTOL: Well, they have a system. They do it all
4 the time. It's -- the question is, does it match up with this
5 court system. I know it -- that it matches up with their
6 court system in .

7 THE COURT: (Indiscernible) federal.

8 MS. BRISTOL: Into federal court.

9 THE COURT: It's federal, right?

10 MS. BRISTOL: I believe it matches up to the district
11 court system.

12 THE COURT: Is it -- okay.

13 MS. BRISTOL: And that's -- that's originally sort of
14 what I was tasked to look into way back, and did, and spoke
15 with the clerk at the Lewiston District Court about that.

16 THE COURT: And what was the result of that?

17 MS. BRISTOL: But -- that the request would have to come
18 from the -- this court directly to them.

19 THE COURT: Okay.

20 MS. BRISTOL: But yeah, it's absolutely possible. They
21 do video --

22 THE COURT: All right. So --

23 MS. BRISTOL: -- hearings all the time in federal --

24 THE COURT: Okay.

25 MS. BRISTOL: -- facilities.

1 THE COURT: Well, that's promising then. So it looks
2 like we can do that then. And we could probably do that
3 fairly expeditiously.

4 MS. BRISTOL: If -- if that's true, we could do that for
5 a hear -- full hearing today. And that's -- that's the issue
6 I'm raising is if it's so expeditiously possible to do it, we
7 should do it for this hearing. This is of the utmost
8 importance to my client.

9 THE COURT: Well, I -- no, I appreciate that, but I -- I
10 guess I'm not just convinced that he has to actually
11 physically see the -- the people testifying -- the witnesses
12 testifying. I think -- I think he can certainly listen to the
13 content of the testimony and we're going to provide you with
14 an opportunity to consult with him in terms of -- well, prior
15 to the cross-examination to see if there's anything that was
16 said during that time. I'm just not convinced that he
17 actually has to see the witness in order to be able to share
18 with you some concerns about the testimony.

19 MS. BRISTOL: I -- I understand that. I -- I really am
20 looking at it from the other side, which is that this court
21 needs to assess him and to do that throughout is so much
22 better than to do it for just his own testimony. It's --
23 that's a short window of -- of looking at a person and
24 deciding whether they're an unfit parent versus over a two-day
25 trial --

1 THE COURT: All right.

2 MS. SHUKIE: But the -- the Court's going to be --

3 THE COURT: Well --

4 MS. SHUKIE: -- focused on the witness --

5 THE COURT: It's duly --

6 MS. SHUKIE: -- testifying not the --

7 THE COURT: No, no. It's duly noted.

8 MS. SHUKIE: Yeah.

9 THE COURT: I think that's -- I get it. I think we've
10 covered that on the record and that's -- this is how I'd like
11 to proceed.

12 MS. BRISTOL: Okay.

13 THE COURT: I'm just going to allow you to present your
14 case, recognizing that there's going to be an opportunity for
15 further proceedings to address the visual aspect of your
16 perspective cases, recognizing that you still have your issue
17 about you think your client needs to be visually seen
18 throughout the entire process.

19 So having said that, I think we're prepared to proceed.

20 MS. SHUKIE: Okay. Well, Your Honor, we did agree to --
21 to stip -- we were able to stipulate to a number of exhibits.

22 THE COURT: Okay.

23 MS. SHUKIE: I didn't know if you wanted us to go through
24 those now, or --

25 THE COURT: Well --

1 least be afforded an opportunity to do so as the case
2 progresses.

3 MR. MASTROGIACOMO: Yeah, I understand. And it's -- a
4 half-day is lopped off anyway. So I brought my file just in
5 case this is the Court's (indiscernible).

6 THE COURT: So your case in chief then -- does it adjust
7 your case somewhat? Or --

8 MS. SHUKIE: Well, we had one remaining witness to call.

9 THE COURT: Okay.

10 MS. SHUKIE: And -- and so -- yeah. We only have one
11 more witness to call.

12 MS. BRISTOL: So may I be heard on this issue?

13 THE COURT: Yes, you may.

14 MS. BRISTOL: There is another alternative. So I -- I --
15 I would request a -- a continuance of the last day of trial,
16 certainly if it only pertains mostly to my client, in order to
17 continue to work on the technology issues, which I can provide
18 more information to the Court about. If we did that, it would
19 allow time for an actual signed consent form from the mother.
20 She risks a finding of unfit -- parental unfitness which is
21 what she's trying to avoid by doing this, I think, if we
22 continue without that signed consent.

23 If we're looking to schedule another day in the district
24 court, he -- we got two attorney schedules, not three at that
25 point, because we presumably have the signed consent.

1 I have made a whole bunch of efforts to get this to
2 happen and the person who I've been working with has been out
3 on the prison side, and she's out today. I've been waiting to
4 hear back from them. I don't actually know where my client
5 is, if he's in the room for the video conference, which he was
6 told by one person, was ready to go. Or if he's by the phone,
7 which he was told by another person, is the way we're
8 proceeding in the prison.

9 The administrative office of the court's approved two
10 days of trial in the district court. My original request was
11 for one day and then there -- somebody added another day to it
12 and that delayed their answer. We had already gotten approved
13 for one day, and then they -- the clerk went back and asked
14 for two days, and so that took a lot of time. And then the
15 clerk was out of the building for -- I think he's part of the
16 team that negotiates the -- the contracts for the staff for
17 the district court. So he was out for two weeks doing that.

18 And so this just hasn't happened because of timing, but I
19 think I know how the person at the prison that would test the
20 video and we can make that happen. And we'll make -- if we do
21 that in one day of trial, as to my client, and we also have
22 time to get the mother's written consent.

23 MR. MASTROGIACOMO: And I -- if the Court would consider
24 that I certainly join that request as well. That would give
25 my client the opportunity to sign the consent, and give me the

1 opportunity to get that part of it done while also preserving
2 the rights if -- like Your Honor says, it falls through this.
3 I wouldn't feel comfortable leaving unless the Court granted
4 consent, which we obviously can't do without the form.

5 MS. SHUKIE: And Your Honor, we obviously strenuously
6 object to a continuance. My clients -- we've waited over for
7 four months to this date and, you know, the -- this isn't the
8 district court. I mean, that clerk who was out for a couple
9 of weeks, that was, as you know, at least a month or two ago.
10 And the clerk may set this trial date, issued a notice
11 requiring counsel to provide information to the court so that
12 we wouldn't come in to these hiccups in terms of -- of the
13 electron -- electric -- the electronic transmission of -- of
14 their client's participation.

15 And my understanding is that father attorney didn't
16 do that and so there's been ample notice, ample time to
17 address these issues. My clients have spent a lot of -- we've
18 been waiting a very long time for this. There's unnecessary
19 delay. The child is waiting for the Court to make a decision.
20 There's been a lot of expense involved with preparing for
21 today.

22 It seems to me that father if he's not able to
23 participate by video today, should at least be able to
24 participate by telephone and the Court was very clear when you
25 hear in recall that -- if that's the way he needs to proceed,

1 if that's the only option, then that's how we're going to
2 proceed.

3 THE COURT: Well, look, I'm not going to continue the
4 case. So your request for a continuance is denied.

5 It is -- so the question, Attorney Bristol, is whether or
6 not your client can appear by video or phone. Is that what
7 the confusion is at this point?

8 MS. BRISTOL: It is a confusion at the prison because
9 there's been a staff member who's been assigned to deal with
10 this issue who's been out for months. In and out, I should
11 say. She was in yesterday. She's out today. And so I don't
12 know who he's with to get on the phone. I talked to someone
13 there this morning and they indicated some confusion. And so
14 I -- and they said they'd call me right back and I'm still
15 waiting for that return phone call. So I don't --

16 THE COURT: Well, at the very minimum, he -- he has to
17 appear --

18 MS. BRISTOL: Yeah.

19 THE COURT: -- by phone (indiscernible). So I think
20 you're -- you're stuck with the dates.

21 MR. MASTROGIACOMO: That's fine. I was planning on being
22 here because of the way it's moving forward.

23 THE COURT: If you choose not to present any evidence, I
24 mean, that's -- so be it.

25 So we can wait for your client then.

1 MS. BRISTOL: We do.

2 THE COURT: Yeah. And you have no idea if you're waiting
3 for a call?

4 MS. BRISTOL: Right.

5 THE COURT: So what that means then is then -- until --
6 and perhaps you should maybe make another call?

7 MS. BRISTOL: Give me time?

8 THE COURT: Anything else at this point?

9 MR. MASTROGIACOMO: I will just ask if I could have the
10 courtroom for a second just so I could speak with my client
11 privately?

12 THE COURT: Sure, yes.

13 MS. SHUKIE: Sure.

14 THE COURT: All right. We'll go off record.

15 (Recess at 9:40 a.m., until 9:52 a.m.)

16 THE MOTHER: I mean, he's very, very loved. You know,
17 I --

18 MR. MASTROGIACOMO: Well, just do the best you can. It
19 may help if you try to mute your own microphone.

20 THE MOTHER: I can't hear him. Okay.

21 MR. MASTROGIACOMO: mother , if you can, try to mute your
22 microphone.

23 THE MOTHER: I can't hear you.

24 MR. MASTROGIACOMO: And nothing at all?

25 THE MOTHER: (Indiscernible).